U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: DEC 0 5 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Jon F
for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner provides software consulting services. It seeks to permanently employ the beneficiary in the United States as a database administrator.[1] The petitioner requests classification of the beneficiary as an advanced degree professional under section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A).

At issue is whether the beneficiary possesses an advanced degree as required by the terms of the labor certification and the requested immigrant preference classification.

I. PROCEDURAL HISTORY

As required by statute, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL), accompanies the petition.[2] The petition's priority date is February 19, 2012.[3]

Part H of the ETA Form 9089 states the following minimum requirements for the offered position of database administrator:

H.4. Education: Bachelor's degree in science, computer science, or a related field.
H.5. Training: None required.
H.6. Experience in the job offered: None required.
H.7. Alternate field of study: Science, computer science, or a related field.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: 60 months in "information technology."
H.14. Specific skills or other requirements: None.

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[1] The Form I-140, Petition for Alien Worker, identifies the offered position as "database administrator." But the accompanying ETA Form 9089, Application for Permanent Employment Certification (labor certification), and the petitioner's letter in support of the petition refer to the offered position as "computer programmer." The U.S. Department of Labor (DOL), which certified the labor application, classified the offered position as database administrator despite the position title of computer programmer on the ETA Form 9089. Notwithstanding the two different job titles, the proffered wage and job duties of the offered position remain consistent in the record. The job titles therefore appear to refer to the same offered position. Consistent with the petitioner's representation on the Form I-140, the AAO will refer to the offered position as database administrator.

[2] *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).

[3] The petition's priority date is the date the DOL accepted the labor certification for processing. 8 C.F.R. § 204.5(d).

Part J of the labor certification states that the beneficiary possesses a bachelor's degree in science from India, completed in 1995. The record contains a copy of the beneficiary's Bachelor of Science degree and memoranda of marks, showing that the beneficiary studied 3 years at Nagarjuna University.

In addition, the record contains three evaluations of the beneficiary's foreign educational credentials. An April 10, 2006 evaluation by Dr. for concludes that the beneficiary's three-year Bachelor of Science degree from India is equivalent to a U.S. Bachelor of Science degree. The evaluation also states that the combination of his degree and employment experience is the equivalent of a U.S. bachelor's degree in computer information systems.[4]

A September 21, 2012 evaluation by for and a September 18, 2012 evaluation by for both conclude that the beneficiary's three-year degree from India, standing alone, is the equivalent of a U.S. Bachelor of Science degree with no specified major field of study.

Part K of the labor certification states that the beneficiary possessed about 150 months, or 12 ½ years, of full-time employment experience in information technology before joining the petitioner on February 11, 2010. The record contains experience letters from all eight of the beneficiary's claimed former employers. Part J.21 of the ETA Form 9089 states that the beneficiary did not gain any of his qualifying experience with the petitioner in a job "substantially comparable" to the offered position.

The director's decision denying the petition concludes that the petitioner failed to demonstrate that the beneficiary met the minimum educational requirements of the offered position stated on the labor certification by the petition's priority date. Specifically, the director found that the petitioner failed to establish that the beneficiary obtained a U.S. bachelor's degree or a foreign equivalent degree.

On appeal, the petitioner states that it demonstrated that the beneficiary earned more credit hours in obtaining his three-year bachelor's degree in India than standard, four-year baccalaureate programs in the U.S. require. It also asserts that the labor certification allows workers with less than 4-year bachelor's degrees to qualify for the offered position.

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[4] In response to the director's Request for Evidence (RFE) of July 31, 2012, the petitioner, through counsel, purported to "withdraw" the April 10, 2006 evaluation. The regulation at 8 C.F.R. § 103.2(b)(1) states: "Any evidence submitted in connection with a benefit request is incorporated into and considered part of the request." A petitioner may withdraw a benefit request pursuant to the regulation at 8 C.F.R. § 103.2(b)(6). But U.S. Citizenship and Immigration Services (USCIS or the Service) regulations do not provide for the withdrawal of evidence. *See also Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983) (although a petitioner's previous petition was withdrawn, the Service may consider evidence accompanying the previous petition when adjudicating the petitioner's new petition). The AAO will therefore consider the April 10, 2006 evaluation as part of the record.

If the AAO cannot grant the appeal, the petitioner asks U.S. Citizenship and Immigration Services (USCIS or the Service) to consider a new petition to classify the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act, which allows for the grant of preference classification to qualified immigrants capable of performing skilled labor requiring at least two years of training or experience.

The petitioner's appeal is properly filed and alleges specific errors in law or fact. The AAO conducts appellate review on a *de novo* basis.[5] The AAO considers all pertinent evidence in the record, including new evidence properly submitted on appeal.[6]

II. LAW AND ANALYSIS

The Roles of the DOL and USCIS in the Immigrant Visa Process

As noted above, the DOL certified the labor certification in this matter. Section 212(a)(5)(A)(i) of the Act bars immigrant workers from admission to the United States unless the DOL certifies that:

> (I) there are not sufficient workers who are able, willing, qualified … and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
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> (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

Sections 212(a)(5)(A)(i)(I),(II).

None of these statutory provisions or the regulations implementing them at 20 C.F.R. § 656, *et seq.*, authorize the DOL to determine whether offered positions and proposed beneficiaries qualify for specific immigrant classifications.

Thus, federal courts have long held that, while the DOL determines whether qualified U.S. workers are available and whether the employment of foreign workers will hurt the wages and working conditions of similarly employed U.S. workers, USCIS determines whether beneficiaries qualify for

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[5] *See* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dep't of Transp., Nat'l Transp. Safety Bd.*, 925 F.2d 1147, 1149 (9th Cir. 1991). Federal courts have long recognized the AAO's *de novo* authority. *See, e.g., Soltane v. Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

[6] The instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1), allow the submission of additional evidence on appeal. The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988).

the offered positions, and whether the offered positions and the beneficiaries qualify for the requested immigrant classifications. *See Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984) (the Service "may make a *de novo* determination of whether the alien is in fact qualified to fill the certified job offer"); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983) ("There is no doubt that the authority to make preference classification decisions rests with [the Service].").

Eligibility for the Classification Sought

Section 203(b)(2)(A) of the Act provides immigrant classification to qualifying members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The term "advanced degree" means:

> [A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

8 C.F.R. § 204.5(k)(2).

A "profession" means "one of the occupations listed in section 101(a)(32) of the Act, [8 U.S.C. § 1101(a)(32)] as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2). Section 101(a)(32) of the Act lists the following professional occupations: "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The following materials must accompany a petition for an advanced degree professional:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
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> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

8 C.F.R. § 204.5(k)(3)(i). In addition, the job offer portion of the labor certification must require the services of a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(4)(i).

Thus, a petition for an advanced degree professional must establish that the beneficiary is a member of the professions holding an advanced degree, and that the minimum job requirements of the offered

position require the services of a professional holding an advanced degree.

Legislative history shows that Congress intended the advanced degree equivalency of a bachelor's degree followed by 5 years of progressive experience to include a U.S. bachelor's degree or a single, foreign equivalent degree. In passing the Immigration Act of 1990, Pub. L. 101-649 (1990), the Joint Explanatory Statement of Congress' Committee of Conference explained that an advanced degree equivalency means "that *the alien must have a bachelor's degree* with at least five years progressive experience in the professions." H.R. Conf. Rpt. 101-955 (Oct. 26, 1990) (reprinted in 1990 U.S.C.C.A.N. 6784, 6786) (emphasis added).

Responding to criticism that the then-proposed regulation at 8 C.F.R. § 204.5 bars the substitution of experience for education to meet the advanced degree equivalency, the Service noted that both the 1990 Act and its legislative history indicate that an alien must possess at least a bachelor's degree.

> The [1990] Act states that, in order to qualify under the second classification, alien members of the professions must hold 'advanced degrees or their equivalent.' As the legislative history ... indicates, the equivalent of an advanced degree is 'a bachelor's degree with at least five years progressive experience in the professions.' Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

In petitions for professionals and advanced degree professionals, where the Act requires a beneficiary to hold at least a baccalaureate degree, USCIS properly concludes that a beneficiary must possess a U.S. bachelor's degree or a single, foreign equivalent degree. *SnapNames.com, Inc. v. Chertoff*, No. 06-65, 2006 WL 3491005 **10-11 (D. Or. Nov. 30, 2006). Where an advanced degree equivalency relies on work experience or a combination of lesser degrees, the result is the "equivalent" of a U.S. bachelor's degree, rather than a "foreign equivalent degree" as the regulation at 8 C.F.R. § 204.5(k)(2) requires.[7] Thus, an advanced degree equivalency requires a beneficiary to possess a single degree that is the "foreign equivalent degree" of a U.S. baccalaureate degree.

Also, an advanced degree equivalency requires a degree from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of "an official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the

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[7] *Cf.* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining "equivalence to completion of a college degree" for H-1B nonimmigrant visa purposes as including a combination of education and specialized training and/or experience). Immigrant visa regulations do not allow a similar equivalency.

submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that classification of an advanced degree professional requires less proof than the less preferable classification of a professional without undermining Congress' immigration preference scheme. *See APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003) (citing *Silverman v. Eastrich Multiple Inv. Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995)) (a basic tenet of statutory construction, giving effect to all provisions, is equally applicable to regulatory construction). Moreover, in proposing the advanced degree professional regulations at 8 C.F.R. § 204.5(k), the Service stated that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." 56 Fed. Reg. 30703, 30706 (July 5, 1991) (emphasis added).[8]

In addition, a three-year bachelor's degree is generally not considered the "foreign equivalent" of a U.S. baccalaureate degree. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977) (a three-year Bachelor of Science degree from India did not equate to a U.S. baccalaureate degree because the foreign degree did not require four years of study); *see also Maramjaya v. USCIS*, No. 06-2158, 2008 WL 9398947 *6 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require a beneficiary to possess a U.S. bachelor's degree or a single, four-year foreign equivalent degree); *Sunshine Rehab Servs., Inc. v. USCIS*, No. 09-13605, 2010 WL 3325442 **8-9 (E.D. Mich. Aug. 20, 2010) (a beneficiary's three-year bachelor's degree was not the foreign equivalent of a U.S. bachelor's degree).

In the instant case, the petitioner asserts that the beneficiary's three-year Bachelor of Science degree from Nagarjuna University in India is equivalent to a U.S. Bachelor of Science degree, as found by the three evaluations of his foreign educational credentials in the record.

The evaluations by Dr. and Mr. all conclude that the beneficiary, in obtaining his three-year Bachelor of Science degree in India, completed the equivalent of more than 120 university credit hours, which is the standard requirement to obtain a bachelor's degree in the U.S. However, the evaluations do not adequately explain how they determined the value of the beneficiary's university coursework in India in U.S. credit hours. Mr. evaluation does not indicate what courses the beneficiary undertook, and their individual contact hours or credit hours. His evaluation simply states that the beneficiary obtained the equivalent of 189 U.S. credit hours without even referencing the total number of contact hours he calculated. Further, Ms. evaluation explicitly states that it relies on "Prof. Expert Opinion Letter" in her determination, thereby raising the question of whether her evaluation is a separate, independent evaluation. Despite a purported expert evaluation of the beneficiary's academic credentials, neither Ms. or Mr. indicate what equivalent major field of study applies to the beneficiary's

[8] *Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (requiring the submission of "an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning" to obtain classification as an alien of exceptional ability).

degree. However, Dr. was only able to determine a field of study by relying on the beneficiary's three-year degree in combination with his employment experience.[9]

The copies of the beneficiary's degree and memoranda of marks from do not indicate how many hours of class he attended or the amount of credits he earned. The record contains a September 13, 2012 affidavit from the beneficiary, stating that he attended 2,840 hours of classes or contact hours to obtain his Bachelor of Science degree. But the record contains no evidence from confirming the beneficiary's statement or the conclusions in the evaluations. The beneficiary's affidavit is self-serving and does not provide independent, objective evidence of his class hours at the university. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) (a petitioner must resolve any inconsistencies in the record by independent, objective evidence). Going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190, 193 (Reg'l Comm'r 1972)).

The evaluations of Ms. and Mr. state that they used the "Carnegie Unit," which they assert measures post-secondary academic credit in the United States, to determine the equivalency of the beneficiary's university coursework in India in U.S. credit hours. But the record contains no evidence that the Carnegie Unit is a useful or reliable way to evaluate Indian university degrees. The Carnegie Unit was adopted to measure classroom time in U.S. high schools in the early 1900s, when high school curricula and hours lacked uniformity. *See* www.carnegiefoundation.org/faqs (accessed Nov. 27, 2013). The Carnegie Unit does not appear to apply to higher education. *See* http://www.suny.edu/facultysenate/TheCarnegieUnit.pdf (accessed Nov. 27, 2013).

The record also lacks peer-reviewed materials confirming that university lecture hours in India are a reliable basis of comparison to U.S. university credit hours. U.S. credit hours presume two hours of study time for each classroom hour. *See* Robert A. Watkins, The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise," at 12, *available at* http://handouts.aacrao.org/am07/finished/F0345p_M-Donahuse.pdf (accessed Nov. 27, 2013). The record lacks evidence that the Indian system has a similar ratio of study time to classroom hours. The

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[9] USCIS may exercise its discretion to treat expert statements as advisory opinions. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). But USCIS is ultimately responsible for the final determination of an alien's eligibility for the benefit sought. *Id.* The submission of expert letters in support of a petition is not presumptive evidence of eligibility. USCIS may evaluate the letters' contents to determine whether they support the alien's claimed eligibility. *Id.* at 795. USCIS may afford less weight to a statement that is uncorroborated, inconsistent with other information, or questionable in any way. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190, 193 (Reg'l Comm'r 1972)); *Matter of D-R-*, 25 I&N Dec. 445, 464 n. 13 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

Watkins' article states that, unlike in the U.S., transfer credits in India are based on the number of examinations completed. *Id.*

As indicated previously, a U.S. baccalaureate degree generally requires four years of university education. *Shah*, 17 I&N Dec. at 245. The evaluations of Ms. and Mr. assert that the beneficiary's three-year Bachelor of Science degree from India should be considered the equivalent of a U.S. Bachelor of Science degree because many U.S. universities offer accelerated baccalaureate programs that students complete in less than four years. But there is no evidence in the record that the three-year baccalaureate program that the beneficiary completed is comparable to an accelerated U.S. baccalaureate program.

The evaluations of Ms. and Mr. also assert that a United Nations Educational, Scientific and Cultural Organization (UNESCO) recommendation requires the U.S. government to accept academic credentials that merit graduate school admission in other nations for graduate admission in the U.S. The United States, however, has never ratified a UNESCO convention that requires it to recognize the higher education qualifications of another country. Although the UNESCO General Conference adopted a Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993, the United States was not then a UNESCO member. In any event, the recommendation does not legally require UNESCO members to recognize the academic qualifications of other members. *See* http://www.unesco.org (accessed Nov. 27, 2013).

The AAO reviewed the Electronic Database for Global Education (EDGE), which was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). The AACRAO's website states that it is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." *See* http://edge.aacrao.org/info.php. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign educational equivalencies.[10]

According to EDGE, the beneficiary's three-year Bachelor of Science degree is comparable to three years of university study in the United States.

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[10] *See Tisco Group, Inc. v. Napolitano*, No. 09-10072, 2010 WL 3464314 *4 (E.D. Mich. Aug. 30, 2010) (USCIS properly weighed the petitioner's educational evaluations and information from EDGE to conclude that the beneficiary's foreign degrees were comparable to only a U.S. bachelor's degree); *Sunshine Rehab Servs., Inc. v. USCIS,* No. 09-13605, 2010 WL 3325442 **8-9 (E.D. Mich. Aug. 20, 2010) (USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion); *Confluence Int'l, Inc. v. Holder,* No. 08-2665, 2009 WL 825793 *4 (D. Minn. Mar. 27, 2009) (the AAO provided a rational explanation for its reliance on AACRAO information to support its decision).

Therefore, based on the conclusions of EDGE, the evidence on appeal does not establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree.

On October 10, 2013, the AAO issued a Notice of Intent to Dismiss (NOID) the petitioner's appeal. The AAO notified the petitioner that the record did not establish the beneficiary's possession of an advanced degree and afforded the petitioner an opportunity to submit additional evidence. Counsel for the petitioner responded to the NOID with a three-page responsive brief, but did not submit any new, probative evidence or documentation.

After carefully reviewing all of the evidence in the record, the AAO concludes that the petitioner has failed to establish that the beneficiary possesses at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2)(A) of the Act.

The Minimum Requirements of the Offered Position

A petitioner must also establish that the beneficiary satisfied all of the education, training, experience and any other requirements of the offered position by the petition's priority date. 8 C.F.R. §§ 103.2(b)(l), (12); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In examining the job offer portion of a labor certification to determine the minimum job requirements of the offered position, USCIS may not ignore a term, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015; *K.R.K. Irvine, Inc.*, 699 F.2d at 1009; *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

Where the job requirements are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" to determine the qualifications that the beneficiary must possess. *Madany*, 696 F.2d at 1015. The only rational way to interpret job requirements of a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale & Linden Park Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements requires "reading and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). Although an employer may prepare a labor certification with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. *See SnapNames.com*, 2006 WL 3491005 at *7.

In the instant case, the director interpreted the labor certification as requiring a U.S. bachelor's degree or a foreign equivalent degree in science, computer science, or a related field, plus 60 months of experience in an information technology occupation.[11]

In response to the AAO's NOID, counsel argues that the labor certification does not expressly require a four-year bachelor's degree. But Part H.4 of the ETA Form 9089 states that the offered position requires a bachelor's degree. Part H.4 clearly refers to a U.S. degree because the labor certification states in Part H.9 that a foreign educational equivalent is also acceptable. Therefore, based on the plain language of the labor certification, the AAO finds that the minimum educational requirements for the offered position are a U.S. bachelor's degree or a foreign equivalent degree. As discussed previously, U.S. bachelor's degrees generally require four years of university study.

Counsel also requests that USCIS consider a new petition by the petitioner, requesting classification of the beneficiary as a skilled worker under section 203(b)(3)(A)(i) of the Act. The record shows that the petitioner filed a new skilled worker petition for the beneficiary accompanied by the same labor certification after the director denied the instant petition. The record shows that USCIS denied the new petition on March 27, 2013. As in the instant case, the director concluded that the petitioner failed to establish the beneficiary's educational qualifications for the offered position as required by the labor certificate. That matter is not properly before the AAO and counsel's request cannot be considered.

For the reasons explained above, the petitioner has failed to establish that the beneficiary possesses a U.S. bachelor's degree or a single, foreign equivalent degree. Therefore, the petitioner has failed to establish that the beneficiary possessed the minimum requirements of the offered position stated on the labor certification by the petition's priority date. Accordingly, the petition must also be denied for this reason.

The Beneficiary's Qualifying Experience

Beyond the decision of the director, the petitioner has also not established that the beneficiary possessed the qualifying experience for the offered position by the petition's priority date.

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[11] The labor certification's acceptance of employment experience in an alternate occupation without requiring any experience in the job offered is unusual. The Board of Alien Labor Certification Appeals has questioned similar requirements. *See Matter of Microsoft Corp.*, 2011-PER-00200, 2012 WL 1074397 *3 (BALCA Mar. 27, 2012) (characterizing a labor certification's requirements of no experience in the job offered but 6 months of experience in an alternate occupation as "conflicting"). However, the DOL appears to allow requirements for experience in an alternate occupation without requiring experience in the job offered. *See* "OFLC [Office of Foreign Labor Certification] Frequently Asked Questions and Answers," Advertisement Content 9, U.S. Dep't of Labor, Emp't & Training Admin., *available at* http://www.foreignlaborcert.doleta.gov/faqsanswers.cfm#adcont9 (accessed Nov. 27, 2013) (an employer's advertisement is not required to include a statement that it will accept any suitable combination of education, training, and/or experience where it indicates that the offered position requires experience in an alternate occupation and not in the job offered).

A petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. §§ 103.2(b)(l), (12); *see also Wing's Tea House,* 16 I&N Dec. at 159; *Katigbak,* 14 I&N Dec. at 49. In evaluating the beneficiary's qualifications for the offered position, USCIS must examine the job offer portion of the labor certification to determine the minimum job requirements. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany,* 696 F.2d at 1015; *K.R.K. Irvine,* 699 F.2d at 1009; *Stewart Infra-Red Commissary,* 661 F.2d at 3.

In the instant case, the labor certification states that the offered position of database administrator requires 60 months of employment experience in an information technology occupation. On the labor certification, the beneficiary claims about 150 months of full-time experience in information technology, as follows:

- About 24 months as a computer programmer analyst with the petitioner in the United States from February 11, 2010 until the petition's priority date of February 19, 2012;
- About 28 months as a computer programmer analyst with in the United States from October 15, 2007 until February 10, 2010;
- About 8 months as a computer programmer analyst with in the United States from February 1, 2007 to October 12, 2007;
- About 41 months as a computer technical lead with in the United Kingdom from May 12, 2003 to October 11, 2006;
- About 2 months as a computer programming manager with in India from March 8, 2003 to May 1, 2003;
- About 17 months as a computer project lead with in Singapore from May 2, 2001 to September 30, 2002;
- About 12 months as a computer project lead with in Singapore from March 17, 2000 to March 25, 2001;
- About 7 months as a computer project lead with from August 3, 1999 to March 15, 2000; and
- About 35 months as a senior software programmer with in India from August 5, 1996 to July 2, 1999.

The petitioner must support the beneficiary's claimed qualifying experience with letters from employers including the name, address, and title of the writers, and a description of the beneficiary's experience. 8 C.F.R. § 204.5(g)(1).

The record contains copies of letters from all eight of the beneficiary's claimed former employers. However, none of the letters state whether the beneficiary was employed on a full- or part-time basis. If the beneficiary worked on a part-time basis for all or most of his former employers, he may not meet the offered position's experience requirement of 60 months of full-time employment experience.

Also, the documents from do not

establish the beneficiary's dates of employment with the companies. The copies of the July 31, 2006 offer letter and signed employment agreement from [redacted] indicate that the company offered the beneficiary a position as a computer programmer analyst and that he agreed to work for the company. But the documents do not establish for how long the beneficiary worked for [redacted] or even that the company employed him at all.

Similarly, the May 10, 2003 letter from [redacted] indicates that the beneficiary ended employment with the company on May 10, 2003. However, the letter does not state the beneficiary's start date of employment or his position with the company. The letter also does not contain an address or describe the beneficiary's experience pursuant to the regulation at 8 C.F.R. § 204.5(g)(1).

The letter from [redacted] also does not describe the beneficiary's experience pursuant to the regulation at 8 C.F.R. § 204.5(g)(1).
For the foregoing reasons, the petitioner has failed to establish that the beneficiary possessed 60 months of experience in an information technology occupation as required by the labor certification by the petition's priority date.

The Petitioner's Ability to Pay the Proffered Wage

Also beyond the decision of the director, the petitioner has failed to establish its continuing ability to pay the beneficiary's proffered wage.

A petitioner must demonstrate its continuing ability to pay the proffered wage from the petition's priority date, continuing until the beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay "shall be in the form of copies of annual reports, federal tax returns, or audited financial statements." *Id.*

The record before the director closed on October 19, 2012, with his receipt of the petitioner's response to his request for evidence. As of that date, the petitioner's 2011 federal income tax return was the most recent return available.

The AAO's NOID requested evidence of the petitioner's ability to pay the beneficiary's proffered wage of $95,576 per year from the petition's priority date of February 19, 2012 onward. However, the petitioner's response to the NOID did not include any evidence of its ability to pay the proffered wage or indicate that the evidence was unavailable.

The petitioner's unexplained failure to provide complete annual reports, federal tax returns, or audited financial statements for each year beginning with the year of the priority date constitutes grounds to dismiss this appeal. The failure to submit requested evidence that precludes a material line of inquiry is ground to dismiss. 8 C.F.R. § 103.2(b)(14).

Also, USCIS records show that, since 1999, the petitioner has filed at least 40 I-140 petitions for other beneficiaries. Accordingly, the petitioner must establish its continuing ability to pay the combined proffered wages of the instant beneficiary and the beneficiaries of its other petitions that were pending from the priority date of the instant petition onward. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977).

The record does not document the priority dates, proffered wages, or wages paid to the petitioner's other beneficiaries. The record also does not establish whether any of the other petitions were withdrawn, revoked, or denied, or whether any of the other beneficiaries obtained lawful permanent residence. Thus, the petitioner has not established its continuing ability to pay the combined proffered wages of the beneficiary and the beneficiaries of its other petitions.

Accordingly, the petitioner has also failed to establish its continuing ability to pay the beneficiary's proffered wage from the petition's priority date onward.

The AAO's NOID notified the petitioner of the AAO intention to dismiss this appeal on the additional grounds of the petitioner's failure to establish the beneficiary's qualifying experience for the offered position and its continuing ability to pay the proffered wage. The NOID also requested additional evidence regarding these issues.

In response to the NOID, counsel states: "Due to the fact that the experience and petitioner's ability to pay have not been raised at this time. The issue is not in question."

Counsel appears to argue that the AAO lacks authority to dismiss the petitioner's appeal on grounds that the director did not invoke. The AAO, however, may deny an application or petition that fails to comply with the technical requirements of the law, even if the director did not identify all of the grounds for denial in the initial decision. *See Spencer Ents., Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, the AAO notified the petitioner of the additional defects in its petition and afforded it an opportunity to rebut the proposed findings. Therefore, the AAO will dismiss the appeal on the additional grounds that the petitioner failed to establish its continuing ability to pay the proffered wage and the beneficiary's qualifying experience for the offered position.

III. CONCLUSION

In summary, the petitioner has failed to establish that the beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification. Therefore, the beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2)(A) of the Act. The director's decision denying the petition is affirmed.

The AAO also finds that the petitioner has failed to establish the beneficiary's qualifying experience for the offered position by the petition's priority date and its continuing ability to pay the beneficiary's proffered wage from the priority date onward. Accordingly, the petition must also be denied for these reasons.

The appeal will be dismissed for the above stated reasons, with each considered an independent and alternate basis for the decision. In visa petition proceedings, the petitioner must establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.